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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF VIRGINIA
3 ALEXANDRIA DIVISION

4 -----x
5 UNITED STATES OF AMERICA, : Criminal Action No.
6 versus : 1:16-CR-300
7 DAMASO LOPEZ NUNEZ, :
8 Defendant. : November 30, 2018
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9 The above-entitled Sentencing was heard by the
10 Honorable T.S. Ellis, III, United States District Judge.

11 A P P E A R A N C E S

12 FOR THE GOVERNMENT: JAMES L. TRUMP, ESQ.
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19 OFFICIAL COURT REPORTER: MS. TONIA M. HARRIS, RPR
20 United States District Court
21 Eastern District of Virginia
401 Courthouse Square
Ninth Floor
22 Alexandria, VA 22314
23
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08:59:51 1 **PROCEEDINGS**

08:59:53 2 (Court proceedings commenced at 8:59 a.m.)

08:59:53 3 THE DEPUTY CLERK: The court calls criminal case,

09:00:03 4 The United States versus Damaso Lopez Nunez, Case

09:00:03 5 No. 2016-CR-300.

09:00:04 6 May I have appearances, please, first for the

09:00:04 7 government.

09:00:05 8 MR. TRUMP: Jim Trump on behalf of the United

09:00:07 9 States, Your Honor. Good morning.

09:00:09 10 THE COURT: Good morning, Mr. Trump. And for the

09:00:09 11 defendant.

09:00:09 12 MR. RETURETA: And good morning -- Your Honor, on

09:00:11 13 behalf of Mr. Lopez Nunez, Manuel Retureta, and I am present

09:00:21 14 with my local counsel, Mr. Matthew Wartel.

09:00:23 15 THE COURT: Yes, good morning. We'll wait the

09:00:25 16 arrival of Mr. Lopez Nunez.

09:00:28 17 (Defendant present.)

09:00:28 18 All right. The record will reflect that Mr. Lopez

09:00:31 19 Nunez is now present in the courtroom in the custody of the

09:00:34 20 marshals.

09:00:36 21 Good morning, Mr. Lopez Nunez.

09:00:40 22 MR. TRUMP: Judge, we have three uncontested orders

09:00:43 23 to hand up as soon as the --

09:00:44 24 THE COURT: All right. You may do so, but let me

09:00:46 25 finish what I was doing.

09:00:46 1 MR. TRUMP: Thank you, Judge.

09:00:48 2 THE COURT: How do you wish to be addressed, with

09:00:51 3 both names or simply with Lopez?

09:00:54 4 THE DEFENDANT: (In English.) Lopez.

09:00:55 5 THE INTERPRETER: Lopez.

09:00:55 6 THE COURT: All right. Good morning, Mr. Lopez.

09:01:00 7 THE DEFENDANT: Good morning.

09:01:03 8 THE COURT: (Speaking Spanish.) You may be seated.

09:01:08 9 All right. Yes, Mr. Trump, you have three orders?

09:01:13 10 MR. TRUMP: Yes, we need a signature of the

09:01:14 11 defendant on one of them, Judge.

09:01:15 12 THE COURT: All right. I've been provided with a

09:01:43 13 copy of what Mr. Lopez gave to the probation officer, but I

09:01:48 14 want both sides to see it to make sure that it is accurate and

09:01:52 15 valid. So I will have the court security officer hand you

09:01:55 16 what appears to be his statement to the probation officer for

09:02:02 17 purposes of the presentence report.

09:02:38 18 Were there three orders, Mr. Trump?

09:02:41 19 MR. TRUMP: Yes, there's a retention order, a

09:02:44 20 take-out order, and the consent order of forfeiture.

09:02:48 21 THE COURT: I have the consent order of forfeiture

09:02:52 22 and the transport order or the take-out order, and the

09:02:58 23 retention order.

09:03:00 24 MR. TRUMP: Yes.

09:03:01 25 THE COURT: All right. And these are consented to,

09:03:07 1 Mr. --

09:03:11 2 MR. RETURETA: Yes, Your Honor, they are.

09:03:11 3 THE COURT: Consented to? All right. Just a

09:03:26 4 moment. All right. I will enter these orders.

09:03:32 5 All right. This defendant is before the Court for

09:03:40 6 sentencing, having been found guilty on the basis of a plea of

09:03:51 7 importing cocaine into the United States, engaging in a

09:03:56 8 conspiracy to do so; is that correct, Mr. Trump?

09:04:00 9 MR. TRUMP: That's correct, Your Honor.

09:04:01 10 THE COURT: Let me inquire, first of all,

09:04:05 11 Mr. Retureta, have you had an adequate opportunity to review

09:04:08 12 the presentence report?

09:04:10 13 MR. RETURETA: I have, Your Honor. I have --

09:04:11 14 THE COURT: And have you had an adequate opportunity

09:04:13 15 to have it orally translated into Spanish for your client and

09:04:18 16 to review it with your client?

09:04:20 17 MR. RETURETA: We have, Your Honor.

09:04:21 18 THE COURT: And are you able to do that without the

09:04:24 19 aid of the services of an interpreter?

09:04:27 20 MR. RETURETA: I am, Your Honor. As the Court is

09:04:30 21 aware, I'm able to do it in a Cuban-English translation as

09:04:34 22 opposed to Spanish.

09:04:37 23 THE COURT: Brings back memories.

09:04:44 24 Back in 1960, before any of you were gleams in your

09:04:52 25 fathers' eyes, my father resettled refugees from Cuba. '59 --

09:04:58 1 '58, '59, somewhere around then, and I remember -- I was not
09:05:05 2 in the house very much -- I was getting ready to go into the
09:05:09 3 navy.

09:05:11 4 But I remember -- of course, we spoke Spanish a good
09:05:15 5 deal, and we laughed about the difference between Cuban
09:05:20 6 Spanish and Colombian Spanish. We all thought Colombian
09:05:27 7 Spanish was the proper Spanish. One example I remember is
09:05:32 8 that in Cuban Spanish, we referred to trucks as --

09:05:32 9 (Speaking Spanish.)

09:05:46 10 -- or something close to that, whereas, in Colombia,
09:05:50 11 they were --

09:05:53 12 (Speaking Spanish.)

09:05:55 13 -- and when we were parking a car in Colombia, we
09:06:00 14 would say --

09:06:02 15 (Speaking Spanish.)

09:06:04 16 In Cuba you would say --

09:06:08 17 (Speaking Spanish.)

09:06:09 18 MR. RETURETA: One of my earliest memories of that
09:06:11 19 difference is with the term --

09:06:11 20 (Speaking Spanish.)

09:06:17 21 -- for us is just a good old-fashioned, "bus."

09:06:20 22 (Speaking Spanish.)

09:06:20 23 -- for the rest of the Spanish-speaking world is,
09:06:23 24 "What are you saying?"

09:06:24 25 But, Your Honor, I think we've had --

09:06:26 1 THE COURT: But you've communicated with Mr. Lopez?

09:06:29 2 MR. RETURETA: Indeed, Your Honor. Indeed, Your

09:06:29 3 Honor.

09:06:29 4 THE COURT: All right.

09:06:31 5 MR. RETURETA: And just to pick up on Your Honor, I

09:06:33 6 appreciate that because two members of my family are here in

09:06:37 7 the United States with families that have grown and gone onto

09:06:42 8 better things, thanks to the generosity of people like your

09:06:44 9 father and the work they did in the early '60s.

09:06:48 10 THE COURT: Well, I'm sure my father contributed

09:06:51 11 somewhat to the problem, because in the years before --

09:06:58 12 (Speaking Spanish.)

09:06:59 13 -- my father did business in Cuba with -- as an

09:07:07 14 employee of a large American company, so I'm sure he did

09:07:11 15 business with --

09:07:13 16 (Speaking Spanish.)

09:07:13 17 -- and those folks, and he needed to pay for that.

09:07:13 18 MR. RETURETA: Indeed, indeed.

09:07:19 19 THE COURT: But in any event, I also -- so that

09:07:23 20 Mr. Lopez realizes, I have some knowledge of his home as well.

09:07:28 21 I lived briefly in the capital, Mexico City, and remember it

09:07:40 22 well. I've not lived in Sinaloa, but I have lived in Mexico.

09:07:44 23 In any event, Mr. Retureta, have you had an adequate

09:07:49 24 opportunity to review the presentence investigation report and

09:07:52 25 to review it with your client?

09:07:54 1 MR. RETURETA: I have, and we have, Your Honor.

09:07:56 2 THE COURT: Are there any objections or corrections

09:07:57 3 to it?

09:07:58 4 MR. RETURETA: No, Your Honor.

09:07:58 5 THE COURT: All right. Mr. Trump, has the

09:08:02 6 government reviewed it?

09:08:03 7 MR. TRUMP: We have, Your Honor.

09:08:04 8 THE COURT: All right. Are there any objections or

09:08:05 9 corrections?

09:08:06 10 MR. TRUMP: No, it was an excellent job.

09:08:07 11 THE COURT: And the record should reflect that both

09:08:10 12 parties have had an opportunity to file briefs in that regard,

09:08:13 13 and the briefs have been filed. I've reviewed them and there

09:08:16 14 is no objection. Accordingly, the Court will adopt the

09:08:18 15 findings and conclusions of the presentence report as the

09:08:21 16 Court's findings and conclusions in this matter.

09:08:25 17 All right. I will, however, alter the presentence

09:08:34 18 report in one respect, and that is that he will be given

09:08:38 19 acceptance of responsibility, and I think that would take it

09:08:43 20 down three levels; is that correct, Mr. Trump?

09:08:46 21 MR. TRUMP: Technically, yes, but it remains legally

09:08:51 22 at a Level 43 for purposes of sentencing. I believe the

09:08:57 23 guidelines provide that there's nothing higher than 43, even

09:09:01 24 though the calculation --

09:09:02 25 THE COURT: Yes, I understand that.

09:09:04 1 MR. TRUMP: -- goes much higher, so yes. But he is
09:09:06 2 entitled to the credit for acceptance of responsibility.

09:09:08 3 THE COURT: But as you point out, the guideline
09:09:14 4 range remains the same.

09:09:17 5 MR. TRUMP: Correct, Your Honor.

09:09:18 6 THE COURT: All right. All right. Now, I'm fairly
09:09:21 7 familiar with this.

09:09:22 8 Does the Government wish to be heard in terms of the
09:09:23 9 imposition of a sentence?

09:09:25 10 MR. TRUMP: No, Your Honor. We rest on our papers.
09:09:27 11 The plea agreement provides for our understanding that with
09:09:33 12 the defendant, that we both ask for a life sentence. We feel
09:09:38 13 that it's justified both under the guidelines and under Title
09:09:41 14 18, United States Code Section 3553.

09:09:44 15 THE COURT: All right. Mr. Retureta?

09:09:47 16 MR. RETURETA: Your Honor, we are in agreement with
09:09:48 17 the government, consistent with our plea agreement. Also, we
09:09:51 18 make that same recommendation. There are three matters that
09:09:54 19 I'd just like to take --

09:09:55 20 THE COURT: Which recommendation?

09:09:56 21 MR. RETURETA: The recommendation in the plea
09:09:58 22 agreement where we recommend to the Court that that life
09:10:01 23 sentence is an appropriate sentence under 3553 and the
09:10:04 24 guidelines.

09:10:04 25 THE COURT: Yes, and I -- the record will reflect

09:10:07 1 when I impose sentence that I would agree with that, even had
09:10:11 2 the parties not agreed.

09:10:13 3 MR. RETURETA: Your Honor, point number one, fine,
09:10:17 4 that has not been discussed, but Probation Officer Smihal, in
09:10:22 5 her report, indicated that he does not have the ability to pay
09:10:25 6 a fine. So we would ask the Court to waive imposition of a
09:10:29 7 fine.

09:10:29 8 THE COURT: Mr. Trump.

09:10:31 9 MR. TRUMP: In light of the consent order
09:10:34 10 forfeiture, we agree, Your Honor.

09:10:35 11 THE COURT: All right.

09:10:36 12 MR. RETURETA: Second point, Your Honor, if we could
09:10:38 13 ask the Court for a recommendation to the Bureau of Prisons
09:10:42 14 for an assignment to a southwest regional facility.

09:10:54 15 THE COURT: All right. Mr. Trump, you don't have an
09:10:56 16 objection to that, do you?

09:10:58 17 MR. TRUMP: No, Your Honor. There may be security
09:11:00 18 concerns that we're not aware of, so we will defer to the
09:11:03 19 judgment of the Bureau of Prisons.

09:11:05 20 THE COURT: Well, I would think that would be
09:11:06 21 primary.

09:11:09 22 MR. TRUMP: Of course, Your Honor.

09:11:11 23 MR. RETURETA: And, Your Honor, one last request of
09:11:14 24 the Court, if we may impose, if I could approach Your Honor,
09:11:18 25 along with government, and Mr. Lopez Nunez for a matter that I

09:11:22 1 would ask the Court to seal.

09:11:23 2 THE COURT: Yes, I will hear that under seal.

09:11:23 3 MR. RETURETA: Thank you, Your Honor.

09:11:26 4 THE COURT: Come to the bench.

09:11:50 5 (Sealed Bench Conference.)

09:14:53 6 THE COURT: All right. Mr. Retureta, do you wish to
09:14:55 7 say anything prior to sentencing? I do have your brief.

09:14:56 8 MR. RETURETA: Nothing further than what is on the
09:14:57 9 brief, Your Honor. It's been a pleasure to represent
09:15:01 10 Mr. Lopez Nunez. He has accepted responsibility from the
09:15:05 11 moment that he arrived in the United States, and we would
09:15:08 12 submit.

09:15:12 13 THE COURT: All right. And he has the right to
09:15:14 14 allocution before the imposition of sentence.

09:15:18 15 Mr. Retureta, does he wish to allocute?

09:15:22 16 Now, anything he says will be transcribed, and in
09:15:27 17 the event that he were later to appear in any proceeding, that
09:15:32 18 would be made available.

09:15:36 19 MR. RETURETA: Your Honor, just briefly.

09:15:37 20 THE COURT: (Speaking Spanish.) Do you wish to say
09:15:40 21 anything?

09:15:43 22 THE DEFENDANT: I just want to thank you,
09:15:46 23 Your Honor.

09:15:46 24 THE COURT: All right. Anything further? (Speaking
09:15:50 25 Spanish.)

09:15:50	1	THE DEFENDANT: Just thank you.
09:15:51	2	THE COURT: All right. Any reason why the Court
09:15:55	3	should not now impose sentence? Remain there, Mr. Lopez.
09:16:01	4	MR. TRUMP: No, Your Honor.
09:16:01	5	THE COURT: All right. The law requires that I
09:16:06	6	consider a variety of factors imposing an appropriate
09:16:11	7	sentence, and I have considered those. The nature and
09:16:13	8	circumstances of the offense. It's a very serious offense.
09:16:17	9	You have been responsible, with others, for the
09:16:21	10	importation of large amounts of drugs into the United States.
09:16:28	11	Drugs are a poison. They threaten to rend the
09:16:33	12	fabric of our society. I doubt seriously that any of you and
09:16:39	13	your co-conspirators who engaged in the importation of these
09:16:45	14	drugs understand the harm, and I also suspect that none of you
09:16:54	15	would want your children to have drugs distributed to them.
09:17:03	16	Indeed, I learned many years ago that many
09:17:06	17	individuals engaged in drug trafficking are fairly careful to
09:17:09	18	avoid using drugs themselves or allowing drugs to be given to
09:17:13	19	their family -- their families. It's surprising to me that it
09:17:20	20	doesn't occur to them that because they think drugs are bad,
09:17:24	21	poison, that they seem to be, and your conspiracy, your
09:17:32	22	conspirators, seem to be blind to that, and instead, focus
09:17:39	23	only on the enormous profits that can be made off the backs of
09:17:45	24	people who suffer from this scourge.
09:17:48	25	So I've considered the nature and circumstances of

09:17:51 1 the offense. I've considered your personal history, such that
09:17:54 2 it is revealed in the presentence report. I've considered the
09:17:59 3 guidelines. They're not mandatory, but they are advisory and
09:18:06 4 they're important in order for me to ensure that there isn't
09:18:11 5 an unwarranted disparity between the sentence I impose on you
09:18:15 6 and the sentence imposed on others convicted of essentially
09:18:20 7 similar conduct. And I have also considered the need to deter
09:18:28 8 you and to deter others, both of those are important in the
09:18:33 9 imposition of the sentence on you.

09:18:37 10 In the end, however, a sentence is a judgment and it
09:18:40 11 is the judgment of this Court that all of the factors taken
09:18:44 12 into account compel the conclusion that an appropriate, just
09:18:50 13 sentence in this case is that you be committed to the custody
09:18:53 14 of the Bureau of Prisons for a period of your remaining life.

09:18:58 15 And upon release from confinement, if you are ever
09:19:02 16 released from confinement, you will serve a period of
09:19:05 17 supervised release of five years. You're to pay a \$100
09:19:13 18 special assessment. The Court does not impose any punitive
09:19:16 19 fine or fine to cover the cost of incarceration, in view of
09:19:20 20 the forfeiture order, and the indication from the probation
09:19:26 21 officer that, at the moment, you do not appear to have the
09:19:32 22 means to pay.

09:19:32 23 Is the probation officer present here?

09:19:34 24 THE PROBATION: Yes, Your Honor.

09:19:35 25 THE COURT: And that's correct, isn't it?

09:19:37 1 THE PROBATION: As far as I'm aware, Your Honor,
09:19:40 2 yes.

09:19:40 3 THE COURT: All right. But in any event, the
09:19:42 4 restitution and the forfeiture -- did I enter an order of
09:19:46 5 forfeiture as well, Mr. Trump?

09:19:48 6 MR. TRUMP: Yes, Your Honor.

09:19:49 7 THE COURT: There isn't a restitution order.

09:19:51 8 MR. TRUMP: That's correct.

09:19:51 9 THE COURT: So it's the forfeiture order that I
09:19:57 10 should have mentioned when I was considering whether a fine
09:20:01 11 was appropriate. And what is the forfeiture order?

09:20:07 12 MR. TRUMP: A money judgment in the amount of
09:20:09 13 \$25,000,000.

09:20:10 14 THE COURT: Yes. I wanted that on the public record
09:20:13 15 so that it's clear.

09:20:16 16 All right. And he'll receive credit for time
09:20:18 17 already served in connection with this offense, and I will
09:20:22 18 recommend to the Bureau of Prisons that it's a recommendation,
09:20:26 19 not an order, that he be designated to serve his sentence in a
09:20:32 20 federal prison in the southwest of the United States as he is
09:20:40 21 a native of Mexico, and I think that's appropriate.

09:20:48 22 And -- however, I repeat that that's a matter for
09:20:53 23 the Bureau of Prisons to consider, and he has to be designated
09:20:57 24 to serve his sentence in a facility commensurate with the need
09:21:02 25 to ensure his security and safety.

09:21:06 1 Anything further to be accomplished in this matter
09:21:10 2 today, Mr. Trump, on behalf of the government?

09:21:12 3 MR. TRUMP: No, Your Honor.

09:21:13 4 THE COURT: Mr. Retureta, on behalf of the
09:21:14 5 Defendant?

09:21:14 6 MR. RETURETA: No, Your Honor.

09:21:15 7 THE COURT: All right. I thank counsel for your
09:21:19 8 cooperation.

09:21:20 9 Good luck to you, Mr. Lopez.

09:21:24 10 THE DEFENDANT: Thank you, Your Honor, and I
09:21:30 11 apologize to all the people of the United States.

09:21:32 12 THE COURT: All right. Call the next matter.

09:21:35 13

09:21:35 14 **(Proceedings adjourned at 9:21 a.m.)**

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CERTIFICATE OF REPORTER

3 I, Tonia Harris, an Official Court Reporter for
4 the Eastern District of Virginia, do hereby certify that I
5 reported by machine shorthand, in my official capacity, the
6 proceedings had and testimony adduced upon the Sentencing
7 in the case of the **UNITED STATES OF AMERICA versus DAMASO**
8 **LOPEZ NUNEZ**, Criminal Action No. 1:16-CR-300, in said court
9 on the 30th day of November, 2018.

10 I further certify that the foregoing 15 pages
11 constitute the official transcript of said proceedings, as
12 taken from my machine shorthand notes, my computer realtime
13 display, together with the backup tape recording of said
14 proceedings to the best of my ability.

15 In witness whereof, I have hereto subscribed my
16 name, this May 26, 2020.

Conia M. Harris

Tonia M. Harris, RPR
Official Court Reporter